

## COMMENT/ARGUMENT

Claims 1-11 have been withdrawn, claims 12-22 remain in the case. Claims 13, 15, 17-20 has been amended.

An example of the claimed invention as set forth in the present case can be found in claim 17:

- The method of servicing a vending machine, comprising the steps of:
- a) polling said machine, compiling sales and cash flow data, providing a data stream;
  - b) **repeatedly transmitting** said data stream, **utilizing monodirectional RF transmission only**, providing a transmission within a reception area;
  - c) repeating steps a-b, while
  - d) providing a service vehicle having product inventory for said vending machine;
  - e) positioning said service vehicle within said reception area;
  - f) receiving said transmission in said reception area, providing received data;
  - g) providing sales and cash flow data for the vending machine, providing a picking ticket;
  - h) pulling inventory from said service vehicle based upon said picking ticket, providing pulled inventory;
  - i) stocking said vending machine utilizing said pulled inventory.
- (Emphasis added)

Claim 18 depends upon claim 17, adding the additional step “j” of resetting each machine at said machine location, so as to reflect the inventory stocked in each machine in step “i”.

Each of the independent claims in the case specify with particularity that the data stream is conveyed (i.e. “transmitted”) to the reception area utilizing **repeated, monodirectional or one-way RF transmission only**. Accordingly, the present system requires a transmitter only at the vending machine, and a receiver at the service vehicle, which is positioned in the pre-designated reception area to receive the transmitted data.

The system taught and claimed in the present application is believed unanticipated in the prior art, comprising a useful, original and unobvious innovation which has made possible the BUZZBOX ® brand curbside polling system, which is unique in the industry as well as enjoying nationwide recognition, as has been earlier established.

The Examiner has cited Schwartzendruber ‘784 as anticipating the concept of utilizing monodirectional or one-way RF transmission as a means of conveying vending data to a reception area, and for this reason has rejected the claims under 103. Applicant respectfully requests reconsideration of this position, for the following reasons, to wit:

**The Devices in Schwartzendruber utilize and require Bi-Directional means to convey the Data Stream From the Vending Machines to the Remote Location.**

The Examiner has cited Column 5, lines 1-28 as support for the assertion that “Schwartzendruber teaches that it is well known to: have monodirectional data transmission between a vending machine and a service station” (06/09/05 Office Action page 3, lines 1-3).

It is respectfully submitted that said Column 5, lines 1-28 does not teach, suggest, or otherwise convey the claimed concept of conveying, via monodirectional only or one-way transmission only, the vending data to the “inventory control centre” (as referenced in ‘784). Such

terms as one-way, monodirectional or the like are not present in the disclosure, nor is there the suggestion of same.

To the contrary, the means of communication indicated (i.e., modem in the circuit of Figure 3) inherently requires two-way communication protocols in order to convey the data from the vending machine to the remote location. In Figure 3 of the '784 patent, which is the sole operational schematic referenced in the above passage cited by the Examiner, a bi-directional communications schematic utilizing a modem is clearly illustrated, as will be shown.

Further, in the specification, Column 7, lines 16-34 of '784 discuss the “handshaking communication” embodied in Figure 3, which is discussed and illustrated as **clearly bi-directional** (in said citation and Figure 3, see elements RxD and TxD, which are well known acronyms for “receive data” and “transmit data”, respectively).

The specification discusses two operational modes for the device of Figure 3, the first mode of Column 5, lines 12-22, wherein the circuitry of Figure 3 is programmed to initiate a phone call for communicating inventory information to the control center via modem, and the second mode of Column 5, lines 29-35, wherein the inventory control center interrogates via phone line the system.

The Examiner has asserted that the first mode, (apparently that of Column 5, lines 12-22), contemplates a “monodirectional data transmission”, apparently equating the initiation of the phone call by the circuit of Figure 3 to convey the vending data to the remote location as “monodirectional data transmission”. However, such is clearly not the case.

A modem by definition is a modulator/demodulator<sup>1</sup> (hence the term “modem”) and by its

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<sup>1</sup>The modulator converts the computer signal to a telephone signal for transmission, while the demodulator converts the received telephone signal to a computer signal. The American Heritage® Dictionary of the English Language, 4<sup>th</sup> Ed, Houghton Mifflin Company, © 2000.

basic operating principles requires a bi-directional flow of data (as in transmit/receive) to convey information. Further, its communications path (i.e., telephone lines) with their tip and ring circuits (see T and R in Figure 3 of '784), require a two-way flow of data to operate (that is initiate a phone call and convey digital data through the analog telephone lines). Schwartzendruber clearly recognizes that, in each of the above two embodiments, a bi-directional flow of data is required, if for no other reason, than to establish and maintain data transmission over telephone lines utilizing a modem. Even where the modem at the vending machine is calling (via telephone lines) the remote location to send data, bi-directional data flow is a necessity. From the modem receiving the initial dial tone to the handshake establishing protocol, speed, log in, etc, even a seemingly "one way" data transfer in fact requires bi-directional flow of data when utilizing a modem over phone lines. As indicated in Schwartzendruber '784, Column 7, lines 12-18:

"Modem 43 operates in a well known manner to convert the serial message into a modulated digital carrier signal for transmission via the tip and ring leads T and R of the associated one of telephone lines 9-15 **along with appropriate handshaking communication signaling** via the control output of modem 43 connected to the PC2 input of the microprocess". (emphasis ours)

In our earlier Response/Request for Continued Examination in the present case dated 04/1/2005, the bi-directional operational requirements of modems via telephonic lines was discussed in some detail:

"It is well known that a telephone system by its very nature is two-

way voice/data conduit, and a modem working across a telephone line acts as both a sender and receiver of data, even when a certain data component might appear to be a “one way” transfer. A better analogy for a modem to modem data transfer over a telephone line is that of a transceiver to a transceiver, as two way communication is required to initiate, monitor, and complete data flow.

A modem initiates a call by first listening for a dial tone (in effect acting as a receiver), dialing the number (acting as a transmitter of sorts), the receiving modem communicates (like a transmitter-receiver, or transceiver) with a sending modem (acting like a transceiver) a handshake to discern speed and protocol prior to data transfer, then the data transfer occurs, with the receiving modem typically initiating periodic signals indicating the data has been received, to insure accuracy and completeness in the data transfer, then the call is terminated.

Attached please find (Exhibit “A”) the reference work under “modem” from the Britannica 2003 Deluxe Edition CDROM Encyclopedia, which details modems, stating in part:

“Modems operate in part by communicating with each other, and to do this they must follow matching protocols, or operating standards..”

“Among other functions, these standards establish the signalling by which modems initiate and terminate communication, establish compatible modulation and encoding schemes, and arrive at identical transmission speeds”.

Based upon the above, one concludes that telephone lines and modem communication over same is bi-directional in nature; put another way, even when certain data might seem to be flowing in one direction, the conduit for transmitting that data requires bi-directional communications, and a telephone line is a bi-directional conduit of data/voice. Thus, the data transmission in ‘784 cannot be mono-directional only. Further, one can only conclude that ‘784 does not teach, suggest, anticipate, or otherwise contemplate the mono-directional data transfer of the present claimed invention.

In comparison to ‘784, the mono-directional RF communication of the claims of the present invention is truly one way. In the present invention, the transmitter transmits an updated string of information to a reception area for reception via a receiver on a service vehicle, when it enters the reception area. There is no handshake, protocol communication, dial tone, or other form of bi-directional communication in the system of the claims of the present application as would be required under a modem communication under

Schwartzendruber.

In fact, in the system described and claimed in the present invention, the transmitter cannot discern if the transmitted data to the reception area has been received, as the receiver at the reception area has no way to communicate with the transmitter, and the transmitter would have no way to receive such a communication. Thus, the assertion that '784 contemplates the mono-directional RF is without basis, and reconsideration is therefore requested."

In the Response of April 1, 2005, Claim 22 was amended so that the limiting term "consisting of" as associated with the step "d", so as to limit the method of communication of the method to mono-directional RF transmission only, in the method as claimed. Further, as discussed above, the remaining claims in the case have been amended such that the system conveys the data stream to the reception area utilizing "monodirectional RF transmission only".

Unlike the prior art, the mono-directional transmission technique detailed in the claims of the present invention teaches a system wherein the transmitter has been configured to in effect transmit "blind" (i.e., with no information or guidance as to status of the receiver), while each and every other prior art system relies upon feedback in some form from the receiver, either in the form of a transceiver, modem, or the like.

Based on the above and foregoing, neither Sedam, Beard, Schwartzendruber, alone or in combination, teach, suggest, or otherwise contemplate the method of conveying the data stream to the reception area utilizing a repeated "mono-directional RF transmission only" which is periodically refreshed, as set forth in the claims. Once again, each of the cited patents by the Examiner teach specifically the use of transceivers, modems, or like apparatus facilitating and/or requiring, in one way or another, bi-directional communications.

The claimed invention simply works in a different manner to convey the data to the reception area (once again, utilizing a periodically refreshed, repeated, mono-directional RF transmission to the designated reception area), and this manner of operation has not been contemplated in the cited prior art.

If Sedam, Beard, and Schwartzendruber are the closest references available, one can reasonably infer that the claims of the present invention could not or would not be physically combined in an operative fashion or to produce the desired result by a person of ordinary skill without the use of the teachings of the present applicant<sup>2</sup>, namely:

The method of servicing a vending machine, comprising the steps of:

- a) receiving data from a vending machine, providing received data;
- b) compiling said data to discern activity, providing filtered received data;
- c) preparing said filtered received data, providing a transmission string;
- d) communicating said transmission string to a reception area consisting of the step of transmitting, utilizing mono-directional RF transmission only, said transmission string to a reception area in the vicinity of said vending machine;
- e) repeating steps a-d, while
- f) positioning a service vehicle within said reception area;
- g) receiving said transmission;
- h) utilizing data from said transmission to pull inventory and money change from said service vehicle for servicing said vending machine, providing pulled inventory;
- I) conveying said pulled inventory to said vending machine;
- j) stocking said vending machine
- k) resetting said vending machine, resetting said filtered received data.

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<sup>2</sup>. In re lintner 458 F2d 1013, 173 USPQ 560, 562 (CCPA 1972), In re Regal, 526, F2d 1399, 188 USPQ 136 (CCPA 1975); In Re Jansson, 609 F2d 996, 203 USPQ 976 (CCPA 1979).

(Emphasis added)

The Examiner has further indicated that :

“The applicant has not at all addressed the teaching in Schwartzendruber of using “radio Communication (col 7, lines 55-60) as an alternative to the use of a modem and telephone lines for transmitting inventory data from the vending machine to the control center, as described in Col 5, lines 1-28. This alternative embodiment taught by Schwartzendruber, in combination with Beard et al and Sedam et al., do anticipate the limitations of the claims”

The text of ‘784 referenced by the Examiner reads:

“Also, although the preferred embodiment of the vending machine utilizes a modem in conjunction with telephone lines connected to the inventory control centre, it is contemplated that other communication links such as radio or cellular telephone may be used. In particular, an alternative embodiment of the invention utilizing a cellular telephone allows the inventory control centre 17 to be in the form of a mobile service vehicle.”

In reply to the Examiner’s assertion, the above statement does not modify the teachings of the ‘784 patent other than to suggest that “other communication links such as a radio or cellular telephone may be used”. The statement is vague, and clearly made as a passing remark. It does not specify a design for the radio embodiment, what type of radio, how it is to operate, whether it is to utilize the schematic of Figure 3, or some other (undocumented) design. The cited passage is clearly not sufficiently detailed so as to enable one of ordinary skill to make or use the purported invention without any undue experimentation. The passage does not indicate the configuration of the (radio) device at



the vending machine or the service vehicle (assuming that a device was used at the service vehicle). Further, it would appear that in referring to “radio”, Schwatzenrubber had in mind a cellular telephone, as he goes on to indicate “In particular, an alternative embodiment of the invention utilizing a cellular telephone allows the inventory control centre 17 to be in the form of a mobile service vehicle.”

Regarding this suggestion of use of a cellular telephone, the undersigned respectfully reminds the Examiner that a cellular telephone is in effect a radio transceiver (i.e., transmitter-receiver) interfaced with a telephone network. As such, it is likewise inherently bi-directional in operation, and utilizing a cellular telephone within the teachings of Schwarzenrubber, especially considering the schematic of Figure 3 (and earlier discussion regarding same above), clearly does not teach, contemplate, or otherwise suggest monodirectional RF transmission only.

Although the ‘784 patent does not teach with particularity a cellular telephone embodiment, it is speculated that if one were to adopt the teachings of the ‘784 patent to a cellular telephone, the modem of Figure 3 would be utilized (along with the inherent bi-directional data transfer associated with modem communications over phone lines incorporated into its design) to interface with the cellular phone, and even if the modem were somehow bypassed (which is not at all taught or suggested), the data would have to flow a circuitous route through the phone, through the phone switching system, to a transmitter then to presumably a cellular phone or modem at the delivery vehicle, a feat which is not believed accomplished utilizing mono-directional RF only, and certainly would not comprise a mono-directional RF only transmission from the vending area to the

reception area. Again, cellular phones are transceivers connected via the telephone network, and require bi-directional communications. Nothing in Schwartzendruber has taught otherwise. Also, it is reiterated that Sedam contemplated use of a telephone network to convey the data, and this has been distinguished out earlier in this case.

The concept of the present application of repeatedly transmitting updated vending data to a vehicle reception area so as to accurately convey the vending data utilizing mono-directional RF transmission only is a unique, innovative, unobvious, and valuable contribution to the vending industry which is deserving of patent protection. The cited references do not teach, suggest, or otherwise contemplate, alone or in combination, this particular feature.

In the earlier filings, the applicant has provided detailed declarations of non-obvious by credible experts in the industry (including Mr, Tim Sanford <sup>3</sup>, editor-in-chief of the nationally recognized trade publication VENDING TIMES) relating to the inventive claimed features of the present system, and the prior art has clearly failed to teach or anticipate the combination of the claims as set forth in the present invention, for reasons discussed above.

As indicated in our earlier filings, the Federal Circuit has made it very clear that secondary considerations must be considered when they are present, and are given equal weight to the primary consideration. WL Gore & Assoc v. Garlock, Inc., 721 F2d 1540, 1555, 220 USPQ 303, 314 (Fed Cir 1983) cert denied 469 US 851 (1984). Not only has there been presented declarations of non-obviousness from experts, but there has been a

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<sup>3</sup> See 1.312 Affidavit Dated 27 September 2004, filed in the present case 29 September 2004.

clear showing of commercial success, and detailed declarations establishing the nexus between the commercial success and the invention, which must be given serious consideration. Demaco Corp v F Von Langsdorff Licensing Ltd 851 F2d at 1392, 7 USPQ2 at 126 (Fed Cir 1988), cert den 488 US 956 (1988).

It is respectfully reiterated that these declarations cannot be ignored, but must be overcome by the Examiner with clearly relevant prior art teachings which on their face anticipate the claimed invention, with a 1) motivation to combine; and an 2) expectation of success<sup>4</sup>, neither of which has been shown with the references cited. Accordingly, the claims are deserving of patent protection, and same is respectfully requested.

As earlier indicated, in order for a claim to be obvious under the prior art under 103, there must have been some explicit or implicit suggestion or motivation in the prior art to combine, substitute or otherwise modify the prior art in a way to produce the claimed invention. The “differences between the subject matter to be patented and the prior art” must be such as to render the “subject matter as a whole” obvious. As earlier indicated, it is inappropriate to use hindsight guided by the applicants disclosure. In the present case, the Examiner admits the invention of applicant is novel, that the product under the invention has “strong evidence” of commercial success.

Brown & Williamson Tobacco Corp v. Phillip Morris, Inc 229 F3d 1120, 56 USPQ2d 1456 (fed Cir 2000), reminds us that a showing of obviousness requires a motivation or suggestion to combine or modify prior art references, coupled with a

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<sup>4</sup>Brown & Williamson Tobacco Corp v. Phillip Morris, Inc, 229 F3d 1120, 56 USPQ2d 1456 (Fed Cir 2000).

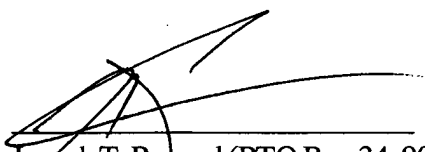
reasonable expectation of success, and that the **initial burden is on the examiner to make a rebuttable prima facie case of obviousness based upon the prior art.** In re Rinehart 531 F2d 1048, 189 USPQ 143 (CCPA 1976).

Applicant respectfully reminds the Examiner that the applicant for a patent has no burden to show proof of non-obviousness until a prima facie case has been made by the examiner. Neither Sedam, Beard, nor Schwartzendruber show the claimed invention, nor has there a showing of motivation or suggestion of combination of these references to teach the invention as claimed in the present application, which contemplates a much different system, requiring different equipment and technique than the prior art.

Thus, on reconsideration, it is respectfully submitted that the present claims should be allowed as being patentable under 35 U.S.C. 103.

If additional issues remain, and the Examiner is of the opinion that same could be resolved by telephone amendment, the undersigned respectfully requests same at (985) 845-0000. Further, if the case is still further rejected, Applicant respectfully requests that the Examiner provide some input as to language that would make the claim(s) allowable.<sup>5</sup>

Respectfully submitted,



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<sup>5</sup>Under MPEP 707.07(j) the Examiner may "in any case deemed appropriate by the Examiner" .."draft one or more claims for the applicant and indicate in his or her action that such claims would be allowed if incorporated in the application by amendment."



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